



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NEFF LUMBER MILLS, INC.
FOR
NEFF BROADWAY LUMBER MILL
VPDES Permit No. VAR05**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Neff Lumber Mills, Inc., regarding the Neff Broadway Lumber Mill facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" or "Site" means the Neff Lumber Mills, Inc. lumber mill located at 12110 Turleytown Road in Broadway, Virginia, from which discharges of stormwater associated with industrial activity occur.
10. "Neff" means Neff Lumber Mills, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Neff is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Neff applied for registration under the Permit and was issued Registration No. VAR050808 on December 16, 2009.
14. "Registration statement" means a registration statement for coverage under a stormwater general permit.
15. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "TMDL" means Total Maximum Daily Load which is the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards. Alternatively, TMDL is an allocation of that water pollutant deemed acceptable to the subject receiving waters.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Neff Lumber Mills, Inc. (Neff) owns and operates a lumber mill (Facility) located at 12110 Turleytown Road in Broadway, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Neff to discharge stormwater associated with industrial activity from the Facility to Brock Creek, in compliance with the terms and conditions of the Permit.
3. Brock Creek is located in the Potomac River Basin (Shenandoah River Subbasin). Brock Creek is not listed in DEQ's 305(b)/303(d) report as impaired.
4. Part I.A.1.b of the Permit requires Neff to conduct benchmark monitoring of stormwater discharges from the Facility's stormwater outfalls for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.
5. Part I.B.7.b of the Permit requires Neff to monitor stormwater discharges from the Facility's stormwater outfalls for pollutants subject to TMDL wasteload allocations.
6. Part I.A.5.a of the Permit requires Neff to submit DMRs on or before the 10th of the month following the monitoring period.
7. During a DEQ file review on August 14, 2015, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:
 - a. Monitoring results for benchmark monitoring of stormwater discharges required by Part I.A.1.b of the Permit had not been submitted for the monitoring period of

January 1 through June 30, 2015.

- b. Monitoring results for TMDL monitoring of stormwater discharges required by Part Permit Part I.B.7.b of the Permit had not been submitted for the monitoring period of January 1 through June 30, 2015.
8. On September 10, 2015, DEQ staff met with Neff representatives to discuss the violations noted above. Neff stated that it had not been checking the outfalls for discharges during storm events. It also stated that it had not conducted quarterly visual monitoring, routine facility investigations or the annual CSCE in 2015.
9. Based on the September 10, 2015 meeting, DEQ staff documented compliance deficiencies with respect to the requirements of the Permit, including the following:
 - a. The quarterly visual examinations of stormwater quality required by Part I.A.1.a of the Permit had not been performed.
 - b. The monthly Facility inspections required by Part Permit Part IV.C.2.b of the Permit had not been conducted.
10. Based on the results of the August 14, 2015 file review and the September 10, 2015 meeting, the Board concludes that Neff has violated conditions Part I.A.1.b, Part I.B.7.b, Part I.A.1.a, and Part IV.C.2.b of the Permit as noted in Paragraph C(7) and C(9) above.
11. VRO issued a Warning Letter and a Notice of Violation for the violations noted in C(7) above as follows: WL No. 2015-05-V-1011, issued May 11, 2015; and NOV No. W2015-08-V-0001, issued August 14, 2015. Additional violations cited in the Warning Letter were resolved on May 20, 2015.
12. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...”
13. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued coverage under no permits or certificates to Neff other than under VPDES Permit No. VAR050808.
16. The unnamed tributary of Brock Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.

17. In order for Neff to return to compliance, DEQ staff and Neff have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Neff, and Neff agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,083.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Neff shall include its Federal Employer Identification Number, 54-0654724, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Neff shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Neff for good cause shown by Neff, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No W2015-08-V-0001 dated August 14, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Neff admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Neff consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Neff declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Neff to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Neff shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Neff shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Neff shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Neff. Nevertheless, Neff agrees to be bound by any compliance date which precedes the effective date of this Order.


11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Neff has completed all of the requirements of the Order;
- b. Neff petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Neff.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Neff from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Neff and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Neff certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Neff to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Neff.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Neff voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of January, 2016.


per Amy T. Owens, Regional Director
Department of Environmental Quality

Neff Lumber Mills, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/23/15 By: [Signature], President
Mike Hoover (Title)
Neff Lumber Mills, Inc.

Commonwealth of Virginia

City/County of Rockingham

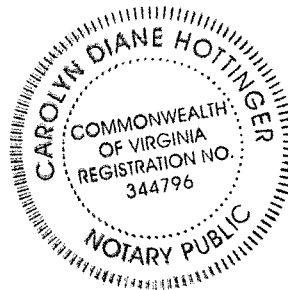
The foregoing document was signed and acknowledged before me this 23 day of
November, 2015, by Michael S Hoover who is
president of Neff Lumber Mills, Inc., on behalf of the corporation.

[Signature]
Notary Public

344796
Registration No.

My commission expires: October 31, 2016

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Quarterly Report Submittal

Neff shall submit quarterly reports to DEQ within 30 days of the end of each calendar quarter. The reports shall include the following.

- a. Quarterly visual monitoring
- b. Monthly routine facility inspections
- c. Annual CSCE (if performed during quarter)

Submittal of reports may be discontinued at the request of the Facility after a minimum of six months of reporting has been completed. Discontinuance of reporting is subject to DEQ approval.

2. DEQ Contact

Unless otherwise specified in this Order, Neff shall submit all requirements of Appendix A of this Order to:

Karen Gail Hensley, P.E.
Enforcement Team Leader
VA DEQ –Valley Regional Office
4411 Early Road
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7821 - phone
(540) 574-7878 - fax
karen.hensley@deq.virginia.gov